

Neifeld Docket No: INVE0013-1

Application/Patent No: 09/315,822

USPTO CONFIRMATION NO: 6988

File/Issue Date: 5/21/1999

Inventor/title: Christensen/Virtual Couponing Method and Apparatus for Use with Consumer Kiosk

Examiner/ArtUnit: Janvier/3688

ENTITY STATUS: Large

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

37 CFR 1.701 APPLICATION FOR EXTENSION OF PATENT TERM

**I. Statement of the Precise Relief Requested**

The patentee requests that the Director calculate an extension of patent term under 37 CFR 1.701 to 920 days for this application. The USPTO noted only 796 days in its determination of patent term adjustment under 35 USC 154(b) in its December 16, 2009 communication. However, 35 USC 154(b) is not applicable. The application was filed May 21, 1999, so 37 CFR 1.701, which applies to patents filed on or after June 8, 1995 and before May 29, 2000, applies.

**II. Material Facts in Support of the Petition**

1. The Director determined a 796 day patent term adjustment, as noted on the determination of patent term adjustment mailed May 24, 2010.
2. On May 21, 1999, the applicant filed this application.
3. On January 23, 2007, the applicant filed a notice of appeal.
4. On July 30, 2009, the BPAI issued a decision on appeal, affirming the examiner in part.
5. 37 CFR 1.701 applies to applications filed on or after June 8, 1995 and before

May 29, 2000.

6. 35 USC 154(b) applies to applications filed on or after May 29, 2000.

### **III. Reasons Why the Relief Requested Should be Granted**

This application was filed on May 21, 1999. Therefore, 37 CFR 1.701 is applicable to calculate extension of patent term.

The extension of patent term applicable under 37 CFR 1.701 is calculated as follows:

- A. **37 CFR 1.701(a)(3) - A patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to: Appellate review by the Board of Patent Appeals and Interferences... [equal to] the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 USC 134 and ending on the date of a final decision in favor of the applicant by the Board ...**

On January 23, 2007, the applicant filed a notice of appeal in this application. On July 30, 2009, the BPAI issued a decision on appeal, affirming the examiner in part. The difference between these dates is 920 days.

### **IV. Conclusion**

The extension of patent term applicable under 37 CFR 1.701 is 920 days. The Director should grant the petition to apply 920 days of extension of patent term instead of the erroneous 796 days of patent term adjustment calculated by the USPTO under 35 USC 154(b).

### **V. Fee under 37 CFR 1.18(e)**

An EFS credit card authorization in the amount of \$200 is submitted herewith to cover the fee for filing an application for the patent term adjustment.

### **VI. List of Exhibits**

Exhibit 1: A copy of the USPTO web site's PAIR Transaction History tab printout for United States Patent Application Number 09/315,822 showing the dates recorded by the USPTO for filing and mailing of papers in this application.

Date 5/31/2010

Respectfully submitted,  
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BTM

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